

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU**

THE ALASKA LEGISLATIVE)
COUNCIL, on behalf of THE)
ALASKA STATE LEGISLATURE ,)

Plaintiff,)

v.)

HONORABLE MICHAEL J.)
DUNLEAVY, in his official capacity as)
Governor for the State of Alaska,)
KELLY TSHIBAKA, in her official)
capacity as Commissioner of)
Administration for the State of Alaska,)
and MICHAEL JOHNSON, in his)
official capacity as Commissioner of)
Education and Early Development for)
the State of Alaska,)

Defendants.)

Case No. **1JU-19-00753 CI**

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The drafters of Alaska's Constitution established a comprehensive system governing the expenditure of state funds. At its core, the constitution requires that each year the legislature and the governor must make the difficult decision of how to allocate the available revenues for that year among all of the competing demands for state government services. Pursuant to this constitutional plan, there must be an annual budget, the legislature must appropriate the money required to fund that budget—and may not dedicate future state revenue to any special purpose—and the governor enjoys a robust veto power to strike or reduce spending each year. This lawsuit, like others in

the past, concerns an effort by one legislature to dictate spending decisions for a future year—in effect usurping both the power and the responsibility from the legislature and governor in office in that future year to set budget priorities. The constitutional question for the court is whether a current legislature may appropriate revenue that will be received only in future years for specific purposes in those future years—in this case the funding of education—thus bypassing the future legislature and governor. And although this litigation involves only a single appropriation, if such future appropriations are valid the constitution contains no limiting provisions that would prevent the legislature from enacting many such appropriations for years into the future, conceivably tying up most or even all state revenues in advance.

Because permitting such future appropriations would run counter to Alaska's constitutional framework and decades of court precedent interpreting Article IX of the Alaska constitution—and because it is antithetical to democratic principles—Governor Dunleavy respectfully asks this court to answer this question in the negative and grant him summary judgment, dismissing the Legislative Council's complaint in its entirety.

II. FACTS

Over the years, the legislature has several times attempted to determine future state spending through various means. The legality of their attempts has depended on whether the means involved use current or future money and whether they are binding self-executing appropriations or only guidelines requiring future legislative action. For example, in 1984 the legislature enacted three “continuing appropriations” by which

future fiscal year general fund revenues were to be appropriated to the power cost equalization fund and to the power development fund for spending in future years.¹ The superior court found this legislation unconstitutional and enjoined the expenditure of future general fund money.² On other occasions, the legislature has utilized current revenues to support appropriations for future years on particular programs.³ For example, the fiscal year 2018 operating budget included an appropriation of \$55 million dollars from the Alaska comprehensive health insurance fund (AS 21.55.430) for Alaska's reinsurance program for fiscal years 2018 through 2023.⁴ This latter type of advanced funding, funded with current money the legislature had control over, has not been challenged in court and is not at issue here.

Similarly, the first iteration of what became known as "forward funding" of public school education involved the legislature appropriating funds on hand. Forward funding began in 2005 when the legislature established the public education fund (AS 14.17.300)⁵ and placed money in that fund to support education funding for future years. In 2006 and 2007 the legislature made supplemental end of the fiscal year appropriations of \$565,000,000 and \$1,000,000,000 from the general fund to the public

¹ Secs. 314, 317, 318, Ch. 173, SLA 1984; Ex. A.

² *Trustees for Alaska v. State*, 3AN-84-12053 CIV (Aug. 30, 1985); Ex. B.

³ In this memorandum the Governor refers to existing revenue and current revenue to include both money the State has on hand and receipts the State anticipates receiving during the next fiscal year.

⁴ HB 57, sec. 27(h).

⁵ Money appropriated to the public education fund can be expended on state aid to school districts and pupil transportation without further appropriation. AS 14.17.300(b).

education fund.⁶ As a result, in 2009, when the legislature faced the prospect of a significant reduction in the state's projected revenues for the next fiscal year, it was able to make no appropriation to the public education fund and instead rely on the balance that had been built up from prior year deposits to support education spending for the 2010 fiscal year.⁷

In 2010, the legislature renewed its efforts to build up the fund by making two appropriations to the fund each consisting of approximately \$1.1 billion dollars. These appropriations meant that the public education fund had enough money to support education spending for the next two fiscal years (2011 and 2012).⁸ From 2011 through 2014, the legislature essentially forward funded education a year ahead by each year appropriating approximately \$1.1 to \$1.2 billion dollars into the public education fund.⁹ In 2015, however, the state's revenues declined substantially and the legislature again discontinued the effort to forward fund education spending by amending the 2014 appropriation to reduce it from \$1,202,568,100 to \$77,008,600 for fiscal year 2016

⁶ Sec. 20(a), Ch. 82, SLA 2006 (Page 144, lines 14 -16, SB 231); Sec. 1, Ch. 10, SLA 2007 (Page 1, lines 4 - 6, SB 61).

⁷ <http://www.legfin.akleg.gov/FisSum/FY10-Budget.pdf> Alaska Division of Legislative Finance report at line 50 identifying savings in the public education fund of over approximately one billion dollars utilized for the fiscal year 2010 appropriations, and line 1 which identified a significant 45.3 percent projected reduction in state revenue for fiscal year 2010.

⁸ Sec. 13(a), Ch. 13, SLA 2010 (Page 18, lines 28 - 29, HB 326); Sec. 26(n), Ch. 41, SLA 2010 (Page 88, lines 20 - 21, HB 300)

⁹ Sec. 25(e), Ch. 03, FSSLA 2011 (Page 80, lines 16 - 17, HB 108); Sec. 26(f), Ch. 15, SLA 2012 (Page 89, lines 8 - 9, HB 284); Sec. 28(e), Ch. 14, SLA 2013 (Page 87, lines 4 - 5, HB 65); Sec. 28(c), Ch. 16, SLA 2014 (Page 90, lines 4 - 5, HB 266).

education spending.¹⁰ In 2016 and 2017, the legislature again only appropriated money for the forthcoming fiscal years (FY2017 and FY2018), and did not put anything aside for future years.¹¹

In 2018, the legislature again decided to forward fund education through the passage of HB 287, the law at issue in this litigation. But unlike prior years, the legislature did not appropriate existing revenues into the public education fund to cover education in FY 2020.¹² To the contrary, HB 287 is fundamentally different from past practices because it purports to appropriate future revenue, rather than funding future expenses with current revenues set aside for that purpose. HB 287 was passed by the legislature in April 2018, and signed by Governor Walker on May 3, 2018, but the appropriation to cover school funding for FY 2020 had an effective date of July 1, 2019, more than a year after the passage of the bill; and after an intervening general election.¹³

Specifically, HB 287 provided, in relevant part:

***Sec. 4. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT.** The sum of \$30,000,000 is appropriated from the general fund to the Department of Education and Early Development to be distributed as grants to school districts according to the average daily membership for each district adjusted under AS 14.17.410(b)(1)(A) – (D) for the fiscal year ending June 30, 2020.

¹⁰ Sec. 31, Ch. 23, SLA 2015 (Page 88, lines 12 - 15, HB 72). This bill also included a reduced by veto appropriation of \$214,802,100 to the public education fund. Sec. 26(c) and (d), Ch. 23, SLA 2015 (Page 84, lines 5 - 12, HB 72).

¹¹ Sec. 26(h) and (i), Ch. 03, 4 SSLA 2016 (Page 87, lines 12 - 18, HB 256); Sec. 39(g) and (h), Ch. 01, SSSLA 2017 (Page 113, lines 20 - 26, HB 57).

¹² Secs. 4 and 5(c), (d), ch.6, SLA 2018 (Page 5, lines 1-5; 13-18, HB 287).

¹³ Sec. 8, ch. 6 SLA 2018 (Page 5, line 24, HB 287).

***Sec. 5. FUND CAPITALIZATION.**

...

(c) The amount necessary to fund the total amount for the fiscal year ending June 30, 2020, of state aid calculated under the public school funding formula under AS 14.17.410(b) is appropriated from the general fund to the public education fund (AS 14.17.300).

(d) The amount necessary to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2020, is appropriated from the general fund to the public education fund (AS 14.17.300).

...

***Sec. 8.** Sections 4 and 5(c) and (d) of this Act *take effect on July 1, 2019.*¹⁴

In November 2018, Michael Dunleavy was elected governor on a platform of fiscal restraint with the aim to balance Alaska's ailing budget. Both the outgoing Governor Walker's proposed budget and the two budget submissions made by the Dunleavy administration included a proposed appropriation for FY20 education spending.¹⁵ However, neither house of the legislature included these appropriations in the versions of the operating budget that each passed.¹⁶ Instead, the legislature took the position that the decision of how much to spend on education in FY20—the largest

¹⁴ Secs. 4, 5, 8, Ch. 06, SLA 2018 (Page 5, lines 1 - 18, 24, HB 287) (emphasis added).

¹⁵ See Affidavit of Brian Fechter & Exhibit C at 3 (Governor Walker's Nov. 30, 2018 proposed budget bill); Operating Bill released Dec. 14, 2018; https://omb.alaska.gov/ombfiles/20_budget/PDFs/Final_FY2020_Operating_Bill_12-14-18.pdf (Page 68, lines 13-16); Operating Bill released Feb. 13, 2019 https://omb.alaska.gov/ombfiles/20_budget/PDFs/SSSB_20_OPERATING_2-13-19.pdf (Page 69, lines 4-7).

¹⁶ See SCS CSSSHB 39.

expenditure of state revenues for the fiscal year¹⁷—had already been made by a prior legislature and governor.

Before the legislative session ended, the governor and the attorney general each informed the legislature that an appropriation in the FY20 operating budget was necessary to fund public schools; and the attorney general issued a formal opinion concluding that the attempted forward appropriation of education funding in 2018 using future revenues was unconstitutional.¹⁸ The legislature, however, refused to include an appropriation for FY20 K-12 education spending in the operating budget ultimately passed by the legislature,¹⁹ continuing to insist on the constitutional validity of the forward appropriation in HB 287. Because the governor believes that no constitutional appropriation has been made for education in FY 2020 and the legislature refuses to pass such an appropriation, the State has reached an impasse requiring judicial intervention.

Governor Dunleavy and the Legislative Council stipulated to the entry of a court order providing that state aid, calculated pursuant to AS 14.17.410(b), would be paid out during the pendency of this litigation; and on July 16, 2019, the Legislative Council filed a complaint against the Governor on behalf of the Alaska Legislature, alleging that his failure to honor its 2018 forward appropriation for FY20 education spending

¹⁷ https://omb.alaska.gov/ombfiles/20_budget/FY20Enacted_dept_summary_ugf_only_9-4-19.pdf

¹⁸ 2019 Op. Att’y Gen., 2019 WL 2112834 May 8, 2019.

¹⁹ See SCS CSSSHB 39.

violated his constitutional duty to faithfully execute the laws and the separation of powers, and infringed on the legislature's power of appropriation and its ability to maintain a system of public schools in accordance with Article VII, § 1 of the Alaska Constitution.

The governor disagrees and now seeks summary judgment dismissing the legislature's complaint. It is the governor's expectation that should the Court rule that HB 287 does not validly fund education for this year, the Legislature will promptly fund the amount necessary for FY20 education.

III. STANDARD OF REVIEW

The meaning of constitutional provisions and the legality of forward appropriations are purely legal questions, which summary judgment is an efficient means for resolving. "Summary judgment is proper if there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law."²⁰ The parties agree that this case does not involve disputes of material fact and is therefore ripe for a summary judgment decision.

In deciding questions of law, Alaska courts adopt the rule of law "most persuasive in light of precedent, reason, and policy."²¹ Constitutional provisions that potentially conflict must be harmonized if possible.²² Likewise, courts should "if

²⁰ *Devine v. Great Divide Ins. Co.*, 350 P.3d 782, 785-86 (Alaska 2015).

²¹ *State v. Schmidt*, 323 P.3d 647, 655 (Alaska 2014) (citations omitted).

²² *Id.* at 656.

possible construe statutes so as to avoid the danger of unconstitutionality.”²³ But the Alaska Supreme Court has also held that limitations on the legislative process that are set forth in the constitution with specificity are mandatory, and may not be ignored.²⁴ And when interpreting the constitution, courts look at “the meaning that the voters would have placed on its provisions” and give “deference to the intent of the people.”²⁵

IV. ARGUMENT

The framers of Alaska’s constitution intended that the State would create annual budgets, appropriating money on an annual basis according to the priorities of the day. They provided that the governor would have enhanced authority over the budget; and expressly prohibited the earmarking of future state revenue for specific purposes. In defiance of this well-established constitutional model, HB 287 purports to appropriate future revenues and circumvent the governor’s constitutional power to limit state spending. If forward-appropriations like those in HB 287 are constitutional, the dedicated funds clause will be sapped of its power to preserve the State’s budgetary flexibility and future legislatures and governors may be able to game the budgetary process so that one legislature’s and governor’s priorities could survive their defeat in an election. The Alaska constitution does not countenance such a result and neither

²³ *State, Dep’t of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (citing *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978)).

²⁴ *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772 (Alaska 1980).

²⁵ *Hickel v. Halford*, 872 P.2d 171, 177 (Alaska 1994) (quoting *Division of Elections v. Johnstone*, 669 P.3d 537, 539 (Alaska 1983) and *Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 169 (Alaska 1991)).

should this court.

A. Alaska's annual appropriation model is embedded in its constitution.

The understanding that the State would develop and enact balanced annual budgets is woven throughout the Finance and Taxation article of the Alaska Constitution. Article IX, § 12, requires the governor to submit an annual budget and appropriation bill “for the next fiscal year” that sets forth “all proposed expenditures and anticipated income of all departments, offices, and agencies of the State.”²⁶ This constitutional requirement was recommended to the delegates by the Public Administration Service’s paper on State Finance as a way to give the executive branch a greater role in the development and control of the state’s budget.²⁷ Article IX, § 12 further commands the governor to “submit a general appropriation bill to authorize the proposed expenditures.”²⁸ Thus, article IX, § 12 clearly contemplates an annual budget and appropriations model for state government.

Other constitutional provisions also reflect the framers’ expectation that the State would operate on an annual budgeting model. For example, article IX, § 8 prohibits the

²⁶ Alaska Const. art. IX, § 12: “The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of the departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.”

²⁷ 3 Alaska Statehood Commission, Constitutional Studies pt. IX, at 24-27 (1955) (noting a “future trend” toward adopting a Model State Constitution provision establishing executive budgeting, which was clearly the model for Alaska Constitution, art. IX, § 12).

²⁸ *Id.*

State from contracting “state debt” except to pay for capital improvements or housing loans for veterans, and requires a statewide vote on bond issues for these purposes. The constitution provides a limited exception to this rule, however, in recognition of the reality that state revenues are received over the course of the fiscal year and may not always be available when the state needs to spend money. So, article IX, § 10 permits the State to “borrow money to meet appropriations for any fiscal year in anticipation of the collection of revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.” Implicit in this language is the expectation that the legislature will be appropriating money for a single year, and that estimates of anticipated revenue may actually fall short of appropriations for that fiscal year, but any such shortfall must be remedied “before the end of the next fiscal year.”

And article IX, § 7—the dedicated funds clause—prohibits the dedication or earmarking of state revenues for any special purpose.²⁹ According to the Alaska Supreme Court, this constitutional provision “prohibits the legislature from dedicating future revenues directly to any special purpose.”³⁰ And the Court explained in *Southeast Alaska Conservation Council v. State*: that: “[w]ithout earmarked funds, the constitutional framers believed that the legislature would be required to decide funding

²⁹ Alaska Const. art. IX, § 7 provides in full: “The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.”

³⁰ *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 387 (Alaska 2003).

priorities annually on the merits of the various proposals presented.”³¹ Finally, in article IX, § 17, the constitutional budget reserve fund provision, subsection (d) requires that, once money is withdrawn from the fund, it must be repaid from any sums of money “in the general fund available for appropriation at the end of each succeeding fiscal year.”

The annual budget model is also reflected in the discussion among constitutional delegates about the interplay between various provisions of the constitution impacting appropriations. In defense of the governor’s especially strong veto power over appropriations,³² for example, delegate Steve McCutcheon argued that greater deference to the governor’s office was warranted with regard to budget matters because “obviously the governor’s office will have gone quite thoroughly into all the aspects of the budget for the state and consequently, having put in as much design as will be necessary to develop not only the expenditures but the revenues necessary to meet them.”³³ The delegate also noted that the constitutional provision separating appropriations from other types of bills³⁴ would enable appropriations to “be considered in the light of the total revenues and the total expenditures of the state, rather than in the

³¹ *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1168 (Alaska 2009) (quoting *Sonneman*, 836 P.2d. at 938-39).

³² *See* art. II, § 16 (requiring a three-fourths vote of the membership of the legislature to override a veto on bills to raise revenue and appropriation bills in comparison to a two-thirds vote for other vetoed bills).

³³ Proceedings of the Alaska Constitutional Convention (PACC) 1739-40 (Jan. 11, 1956).

³⁴ Art. II, § 13 (“Bills for appropriations shall be confined to appropriations.”).

hodgepodge fashion in the past.”³⁵

In sum, these constitutional provisions assume—either expressly or implicitly—an annual budget, in which the governor and the legislature determine the State’s policy priorities and the legislature, subject to the governor’s veto authority, appropriates the revenue that will be available in the coming fiscal year to accomplish the State’s policy objectives.

B. Within this annual appropriation model, power over state spending is shared by the legislature and the governor.

The framers of Alaska’s constitution also intended that the legislature would share power over state spending with the governor. The Alaska Supreme Court identified this joint budgetary control responsibility when describing the history of the prohibition against dedicating revenues: “The constitutional convention committee which drafted the prohibition on the dedication of funds commented that the reason for the prohibition is to preserve control of and responsibility for state spending *in the legislature and the governor*.”³⁶ Likewise, the constitutional appropriations process incorporates a system of checks and balances between the legislative and executive branches. Article IX, § 13—the appropriations clause—provides that “[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law.” This provision gives the legislature primary control over the state’s purse-strings: nothing can be spent without legislative approval. But the legislature’s authority is not

³⁵ PACC at 1740.

³⁶ *Sonneman v. Hickel*, 836 P.2d 936, 938 (Alaska 1992) (emphasis added).

absolute. On the contrary, as the Alaska Supreme Court has recently noted: “the governor’s veto clause provides an executive check on the legislature’s spending plan.”³⁷

Indeed, the framers of Alaska’s constitution gave the governor greater authority over legislative decisions regarding state spending than over other legislative enactments. The legislature needs only a two-thirds majority to override the veto of regular legislation under Art. II, § 16, but the agreement of three-fourths of the legislature is necessary to override the veto of an item in an appropriations bill.

“Delegate V. Rivers stated that this section was ‘a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive.’”³⁸ And the Alaska Supreme Court has noted that the legislature may not attempt to subvert or avoid the governor’s veto power: “The requirement that the legislature sufficiently describe monetary asset transfers exists so that the legislature cannot purposefully fail to include a sum certain in order to avoid the governor’s appropriations veto.”³⁹ Thus, the delegates at the constitutional convention gave the governor expanded power with respect to budget issues.

³⁷ *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 101–02 (Alaska 2016).

³⁸ *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d 891, 896 (Alaska 2004).

³⁹ *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 p.3d 891, 898 n.39 (Alaska 2004).

C. The Alaska Supreme Court has repeatedly held that the Alaska constitution follows an annual appropriation model.

The Alaska Supreme Court has repeatedly emphasized that Alaska's constitution contemplates an annual budgeting process in which each legislature and each governor makes a review of all of the state's fiscal needs *each year* unhindered by limitations or restrictions by prior legislatures.

For example, in *Sonneman v. Hickel*, the Supreme Court noted that the anti-dedication clause contemplates a budget model "under which the disposition of all revenues will be decided anew on *an annual basis*."⁴⁰ The Court further pointed out that "[t]he constitutional clause prohibiting dedicated funds *seeks to preserve an annual appropriation model* which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. As the debates make clear, all departments were to be 'in the same position' as competitors for funds with the need to 'sell their viewpoint along with everyone else.'"⁴¹

The Court reiterated that the purpose of the dedicated funds clause was to ensure the continuing vitality of the annual budgeting model adopted by the framers of Alaska's constitution in *Myers v. Alaska Housing Finance Corp.*: "The anti-dedication clause helps preserve the state's *annual appropriation model* and ensures that

⁴⁰ *Sonneman v. Hickel*, 836 P.2d at 939 (emphasis added).

⁴¹ *Id.* at 940 (emphasis added); *see also, id.* at 938-39 ("Without earmarked funds, the constitutional framers believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented.")

governmental departments will not be restricted in requesting funds from all sources.”⁴²

Thus, not only does the structure of the constitution provide for annual budgeting and appropriations, the Alaska Supreme Court has consistently held that this is the constitutional model.

D. Forward appropriations trample the annual appropriation model, subvert the governor’s veto power, and eviscerate the dedicated funds prohibition.

The legislature asserts that HB 287 is a valid appropriation because it was passed by a majority of both houses of the legislature and signed by the governor in 2018 and allege that the constitution requires nothing more. But, if adopted by this court, the legislature’s position would trample the annual appropriation model, undermine both the legislature’s and the governor’s authority over state spending, and turn the dedicated funds prohibition into a quaint relic. Although this case is about an appropriation that forward funds a single budget item for only one year, the legislature’s argument does not recognize any limiting factors—if HB 287 is a constitutionally-valid appropriation, nothing would prevent a legislature from forward-funding many, even all, line-items in the state budget, for years into the future. Such an outcome is antithetical to Alaska’s constitutional framework and decades of court precedent. This court should reject the legislature’s claim to the power of forward-appropriations and reaffirm the long-standing and constitutionally-mandated requirement that the legislature appropriate money on an annual basis.

⁴² *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 389 (Alaska 2003) (emphasis added).

1. Forward-appropriations violate the annual budgeting model.

When the legislature began to forward-fund education in 2006-2007, it did so by setting aside *from current revenue* the money to fund Alaska's schools for the next two fiscal years. In essence, the legislature decided to spend some of FY 2006 and 2007 revenue by saving it to pay for schools in FY 2008. And the appropriation was effectuated—i.e. the funds were transferred into the public education fund—*during FY 2006 and 2007*.⁴³ “Spending” this money by saving it for one year in the public education fund may stretch the boundaries of the annual appropriation model, but it falls within it because it represents a decision by the legislature to spend money that it actually has. Under the Alaska constitution, appropriations are not required to expire on an annual basis and some projects take longer to come fully to fruition.

In contrast, HB 287's appropriation of education funding for FY 2020, became effective on July 1, 2019, more than a year after it was signed into law. It did not spend FY 2019 revenue; no money was saved to cover the appropriation for 2020. In effect, then, the 30th Alaska State Legislature and Governor Walker decided in advance how the 31st Legislature and Governor Dunleavy should spend at least part of the new revenue available to them in FY 2020. And although HB 287 only forward appropriates for a single year, nothing in the logic that the legislature uses to defend it incorporates any limiting principle. If this appropriation is valid, the legislature could appropriate funding for education for the next fifty years—or, indeed, entire budgets for the next

⁴³ Sec. 68(b), Ch. 82, SLA 2006 (Page 180, line 20, SB 231) (Effective date for Sec. 20(a) appropriation); Sec. 1, Ch. 10, SLA 2007 (Page 1, lines 4 - 6, SB 61).

fifty years—so long as it had a cooperative governor in office, or the ability to override his veto. Such a result is plainly inconsistent with Alaska’s annual budgeting framework.

2. HB 287 subverts both the governor’s veto authority and the legislature’s appropriation power.

Although the legislature may argue that this appropriation does no violence to the governor’s constitutional veto authority because Governor Walker had the opportunity to exercise that power and chose not to, the framers expressly intended to give the governor enhanced authority to check legislative spending within the framework of annual budgets. And to be meaningful that power must be contemporaneous with the spending it is intended to check. The legislature’s claim to the power to appropriate into the future is antithetical to the most fundamental democratic principles. A governor asked to sign-off on future spending, spending that will occur—and be paid for—after (perhaps long after) he has left office, can do so without any accountability to voters. And although in this case, the 31st Legislature is seeking to force the governor to honor the 30th Legislature’s appropriation, forward appropriations actually threaten the legislature’s constitutional powers as well as the governor’s.

In the present scenario, this particular appropriation is being used to thwart Governor Dunleavy’s veto power, but a similar appropriation, or appropriations, could in the future thwart the *legislature’s* budget priorities and the will of the electorate. For example, if forward appropriations are constitutionally-permitted, nothing would prevent a politically-aligned legislature and governor from passing budgets for many

years into the future, knowing that so long as future legislatures and governors were not similarly in agreement, their original budget decisions would stick. Legislative flexibility would be severely compromised by the existence of already enacted appropriations—for example, the compromise and exchange of votes necessary to enact a budget would be substantially constrained by the need to repeal appropriations to enact a budget rather than simply pass them. Previously-enacted appropriations, after all, could be repealed only with the concurrence of majorities of *both* houses of the legislature—or with the concurrence of three-fourths of the Legislature in the event of a gubernatorial veto—whereas the rejection of a present proposal to appropriate funds only requires the opposition of a majority of *either* house. And, a new governor who favored an existing appropriation could veto a repeal, undermining the legislature’s power over the purse-strings, just as in the current situation, the governor’s veto power is subverted.

Thus, a governor who has a friendly legislature in his first two years in office, could conceivably enact a budget for his entire term (or even two) and then force that budget on future legislatures, so long as his opponents were not able to win sufficient seats to successfully override his veto. In such a case, our majority-rule democracy becomes a super-majority-rule democracy. And elections no longer necessarily have consequences.

3. Forward-appropriations eviscerate the dedicated funds prohibition.

The Alaska Supreme Court has repeatedly emphasized that the purpose of the

dedicated funds prohibition was to maintain the greatest possible annual budgeting flexibility for the State: “Without earmarked funds, the constitutional framers believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented.”⁴⁴ Forward appropriations eviscerate this goal expressly and deliberately, effectuating an end-run around the dedicated funds clause.

The framers of Alaska’s constitution anticipated that legislators might seek to earmark specific sources of revenue for favored purposes, thereby limiting future governments’ ability to use that money for other policy priorities; and they adopted the dedicated funds prohibition to prevent state revenues from being committed in advance, so as to preserve legislative flexibility. But now, in defiance of this well-established constitutional principle, the legislature suggests that the constitution permits it to accomplish exactly what the dedicated funds clause was designed to prevent, by the simple means of forward appropriating general fund revenues. This cannot be so.

In *Wielechowski v. State*, the Alaska Supreme Court held that one legislature could not bind future legislatures to pay for permanent fund dividends by enacting in statute a formula for calculating the amount of dividends.⁴⁵ But, if the legislature is correct, all that earlier legislature needed to do to ensure future payments of dividends at

⁴⁴ *Sonneman*, 836 P.2d at 938-39; *see also*, *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1168 (Alaska 2009) (“The constitutional convention committee which drafted the prohibition on the dedication of funds commented that the reason for the prohibition is to preserve control of and responsibility for state spending in the legislature and the governor.”).

⁴⁵ 403 P.3d 1141 (Alaska 2017).

whatever level it wanted was to enact a forward appropriation of that amount. If only it had done that, according to the legislature, Governor Walker would have been powerless to reduce the dividend amount in 2017. But this is not how the constitutional framework operates.

As the Alaska Supreme Court has repeatedly noted, the dedicated funds clause and the annual budgeting model go hand-in-hand. The constitutional design was intended to preserve maximum annual flexibility in the legislature and governor to determine state spending priorities. This is the entire point of the dedicated funds prohibition; and it is baked into the constitutional framework. This court should not permit the legislature to make such a transparent end-run around a core constitutional principle that has been endorsed by the Supreme Court over and over again.

E. The education clause of the Alaska Constitution is irrelevant to this case.

In its complaint, the Legislative Council alleges that the governor's failure to execute the forward-appropriations made in ch. 6, SLA 2018 "infringes on the ability of the legislature to maintain a system of public schools in accordance with article VII, section 1, Constitution of the State of Alaska." [Complaint at ¶¶ 20, 26, and 32] But this allegation misses the point—the fact that the appropriations at issue in this lawsuit were for education is irrelevant to the legal question before the court.

The governor asserts that the legislature cannot constitutionally enact forward appropriations—i.e. appropriations with an effective date after the end of next fiscal year—for the reasons explained above. The legislature disagrees and asserts that so long

as an appropriation passes the legislature and is not vetoed by the governor, it is valid regardless of its effective date. Neither parties' legal analysis turns on the purpose of the appropriation; the legislature's complaint does not allege that the legislature's appropriation power is enhanced in the arena of education—nor could it credibly do so. Thus, this case is about the meaning of Alaska's annual budgeting model and the scope of the legislature's appropriations power, not about education funding.

Moreover, the Alaska Supreme Court has already rejected the notion that a worthy use of funds can trump the founders' recognition of the dangers of tying up state revenues in advance:

[D]edicating funds for a deserving purpose or a worthy institution is an attractive idea. Our constitutional founders were aware of the power of the dedication impulse. They decided that the good that might come from the dedication of funds for a particular purpose was outweighed by the long-term harm to state finances that would result from a broad application of the practice.⁴⁶

If the legislature is right that it may constitutionally appropriate funds for years into the future, it will be able to do so for any public purpose, not just education. If the governor is right that forward appropriations violate the constitution, then it is the legislature, not the governor, that has failed to comply with the mandate of Article 7, § 1, by passing a valid appropriation. And whatever the court decides, Alaska's public schools will be funded—either because HB 287 is found to be constitutional or because the State will take the steps necessary for the legislature to pass a valid education

⁴⁶ SEACC, 202 P.3d at 1176-77.

appropriation.

V. CONCLUSION

Because forward appropriations violate the constitution's annual budgeting model, undermine both the governor's and the legislature's authority over state spending, and eviscerate the dedicated funds prohibition, the governor asks this court to find that HB 287 is not a constitutionally-valid appropriation. And because HB 287 is not a valid appropriation, as a matter of law none of the legislature's claims against the governor has merit. As a result, the governor asks the court to grant him summary judgment on each of the Council's claims and dismiss the complaint in its entirety.

DATED: September 13, 2019.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:



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* Sec. 313. The sum of \$210,000,000 is appropriated from the general fund to the power development revolving loan fund established by AS 44.83.600, for loans to be made to the Alaska Power Authority.

* Sec. 314. AS 44.83 is amended by adding new sections to read:

Sec. 44.83.165. CONTINUING APPROPRIATION FOR POWER COST EQUALIZATION. The sum of \$16,300,000 is appropriated on July 1, 1984, and the sum of \$21,700,000 is appropriated on July 1 of each subsequent fiscal year from the general fund to the power cost equalization fund (AS 44.83.162).

Sec. 44.83.410. CONTINUING APPROPRIATION FOR SUSITNA RIVER HYDROELECTRIC PROJECT. The sum of \$100,000,000 is appropriated on July 1, 1984 and the sum of \$200,000,000 is appropriated on July 1 of each subsequent fiscal year from the general fund to the authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in, and rate stabilization for, the Susitna River hydroelectric project.

Sec. 44.83.420. CONTINUING APPROPRIATION FOR BRADLEY LAKE HYDROELECTRIC PROJECT. The sum of \$50,000,000 is appropriated on July 1 of each fiscal year from the general fund to the authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in, and rate stabilization for, the Bradley Lake hydroelectric project.

* Sec. 315. The sum of \$5,500,000 is appropriated from the general fund to the Alaska Power Authority for the purpose of contracting with the City of Seward for the Seward to Davies Creek intertie and electrical system.

* Sec. 316. The appropriations made in secs. 313 - 315 and 319 of this Act are not one-year appropriations and do not lapse under AS 37.25.010.

* Sec. 317. AS 44.83.410 is repealed June 30, 1991.

* Sec. 318. AS 44.83.420 is repealed June 30, 1988.


-47-HCS CSSB 409(Fin)am H(reengrossed)

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Filed in the Trial Court
STATE OF ALASKA THIRD DISTRICT

AUG 30 1985

By  Clerk of the Trial Court
Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TRUSTEES FOR ALASKA, ALASKA)
PUBLIC INTEREST RESEARCH)
GROUP,)
Plaintiffs,)

vs.)

STATE OF ALASKA,)
Defendant.)

No. 3AN-84-12053 CIV

ORDER GRANTING MOTION FOR JUDGMENT TO PLAINTIFFS

This action came before this Court on Plaintiffs' Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment, pursuant to a Stipulation filed by the Parties. The Court finds, upon consideration of the pleadings and briefs, and arguments of counsel, that there is no genuine issue of material fact in dispute, and that Plaintiffs are entitled to judgment as a matter of law.

IT IS ORDERED that Plaintiffs' Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment is granted, and that the following relief is appropriate:

1. The Court finds and declares that AS 44.83.165, 44.83.410, and 44.83.420, and Sections 314, 317, and 318 of ch 171 SLA 1984 are unconstitutional, and are null and void and of no effect;
2. The State is enjoined from expending any monies appropriated by AS 44.83.165, AS 44.83.410 and AS 44.83.420 on or after July 1, 1985;
3. The State is ordered to return to the general fund the unexpended balance of any funds appropriated by AS 44.83.165, AS

44.83.410, and AS 44.83.420 on or after July 1, 1985.

4. The Court will award Plaintiffs their reasonable costs and attorneys fees incurred in connection with this action, upon appropriate motion filed by the Plaintiffs.

Brian C. Shortall
Judge Brian C. Shortall

Dated: August 30, 1985

I certify that on 8/30/85
a copy of the above was ~~mailed~~
hand delivered to each of the
attorneys and or individuals at
their address of record

Scott H. Shatto

*Baldwin
Adler*

1 * Sec. 1. The following appropriation items are for operating expenditures from the general
 2 fund or other funds as set out in the fiscal year 2020 budget summary for the operating budget
 3 by funding source to the agencies named for the purposes expressed for the fiscal year
 4 beginning July 1, 2019 and ending June 30, 2020, unless otherwise indicated.

	Appropriation	General	Other
	Allocations	Items	Funds
	*****	*****	
	***** Department of Administration *****		
	*****	*****	

10	Centralized Administrative Services	89,586,800	10,997,300	78,589,500
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11 The amount appropriated by this appropriation includes the unexpended and unobligated
 12 balance on June 30, 2019, of inter-agency receipts collected in the Department of
 13 Administration's federally approved cost allocation plans.

14	Office of Administrative	2,803,100
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15 Hearings

16	DOA Leases	1,026,400
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17	Office of the Commissioner	961,400
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18	Administrative Services	2,517,200
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19	Finance	11,272,000
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20 The amount allocated for Finance includes the unexpended and unobligated balance on June
 21 30, 2019, of program receipts from credit card rebates.

22	E-Travel	2,338,100
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23	Personnel	12,718,900
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24 The amount allocated for the Division of Personnel for the Americans with Disabilities Act
 25 includes the unexpended and unobligated balance on June 30, 2019, of inter-agency receipts
 26 collected for cost allocation of the Americans with Disabilities Act.

27	Labor Relations	1,330,700
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28	Centralized Human	112,200
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29 Resources

30	Retirement and Benefits	19,344,200
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31 Of the amount appropriated in this allocation, up to \$500,000 of budget authority may be

1 those bonds for the fiscal year ending June 30, 2020.

2 (o) The amount necessary for payment of interest on bonds issued under AS
3 37.18.030, estimated to be \$27,000,000, is appropriated from the general fund to the Alaska
4 Tax Credit Certificate Bond Corporation.

5 * **Sec. 22. FEDERAL AND OTHER PROGRAM RECEIPTS.** (a) Federal receipts,
6 designated program receipts under AS 37.05.146(b)(3), information services fund program
7 receipts under AS 44.21.045(b), Exxon Valdez oil spill trust receipts under
8 AS 37.05.146(b)(4), receipts of the Alaska Housing Finance Corporation, receipts of the
9 Alaska marine highway system fund under AS 19.65.060(a), receipts of the vaccine
10 assessment account (AS 18.09.230), receipts of the University of Alaska under
11 AS 37.05.146(b)(2), receipts of the Highways Equipment Working Capital Fund under AS
12 44.68.210, and receipts of commercial fisheries test fishing operations under
13 AS 37.05.146(c)(21) that are received during the fiscal year ending June 30, 2020, and that
14 exceed the amounts appropriated by this Act are appropriated conditioned on compliance with
15 the program review provisions of AS 37.07.080(h).

16 (b) If federal or other program receipts under AS 37.05.146 and AS 44.21.045(b) that
17 are received during the fiscal year ending June 30, 2020, exceed the amounts appropriated by
18 this Act, the appropriations from state funds for the affected program shall be reduced by the
19 excess if the reductions are consistent with applicable federal statutes.

20 (c) If federal or other program receipts under AS 37.05.146 and AS 44.21.045(b) that
21 are received during the fiscal year ending June 30, 2020, fall short of the amounts
22 appropriated by this Act, the affected appropriation is reduced by the amount of the shortfall
23 in receipts.

24 * **Sec. 23. FUND CAPITALIZATION.** (a) The portions of the fees listed in this subsection
25 that are collected during the fiscal year ending June 30, 2020, estimated to be \$23,300, are
26 appropriated to the Alaska children's trust grant account (AS 37.14.205(a)):

27 (1) fees collected under AS 18.50.225, less the cost of supplies, for the
28 issuance of heirloom birth certificates;

29 (2) fees collected under AS 18.50.272, less the cost of supplies, for the
30 issuance of heirloom marriage certificates;

31 (3) fees collected under AS 28.10.421(d) for the issuance of special request

1 Alaska children's trust license plates, less the cost of issuing the license plates.

2 (b) The amount of federal receipts received for disaster relief during the fiscal year
3 ending June 30, 2020, estimated to be \$9,000,000, is appropriated to the disaster relief fund
4 (AS 26.23.300(a)).

5 (c) The sum of \$2,000,000 is appropriated from the general fund to the disaster relief
6 fund (AS 26.23.300(a)).

7 (d) The amount of municipal bond bank receipts determined under AS 44.85.270(h)
8 to be available for transfer by the Alaska Municipal Bond Bank Authority for the fiscal year
9 ending June 30, 2019, estimated to be \$0, is appropriated to the Alaska municipal bond bank
10 authority reserve fund (AS 44.85.270(a)).

11 (e) If the Alaska Municipal Bond Bank Authority must draw on the Alaska municipal
12 bond bank authority reserve fund (AS 44.85.270(a)) because of a default by a borrower, an
13 amount equal to the amount drawn from the reserve is appropriated from the general fund to
14 the Alaska municipal bond bank authority reserve fund (AS 44.85.270(a)).

15 (f) The sum of \$30,000,000 is appropriated from the power cost equalization
16 endowment fund (AS 42.45.070) to the community assistance fund (AS 29.60.850).

17 (g) sec. 5(c)-(d), ch. 6, SLA2018, page 5, lines 13-18 are amended to read:

18 (c) The amount necessary to fund the total amount for the fiscal year ending
19 June 30, 2020, of state aid calculated under the public school funding formula under
20 AS 14.17.410(b), **estimated to be \$1,172,603,900,** is appropriated from the general
21 fund to the public education fund (AS 14.17.300).

22 (d) The amount necessary, **estimated to be \$77,214,600,** to fund
23 transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2020,
24 is appropriated from the general fund to the public education fund (AS 14.17.300).

25 (h) The amount necessary to fund the total amount for the fiscal year ending June 30,
26 2021, of state aid calculated under the public school funding formula under AS 14.17.410(b)
27 is appropriated from the general fund to the public education fund (AS 14.17.300).

28 (i) The amount necessary to fund transportation of students under AS 14.09.010 for
29 the fiscal year ending June 30, 2021, is appropriated from the general fund to the public
30 education fund (AS 14.17.300).

31 (j) The sum of \$39,389,000 is appropriated from the general fund to the regional